

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SIXTY-01 ASSOCIATION OF APARTMENT
OWNERS,

Plaintiff,

v.

PUBLIC SERVICE INSURANCE
COMPANY, *et al.*,

Defendants.

CASE NO. C22-1373-JCC

ORDER

This matter comes before the Court on Plaintiff's current motion to compel (Dkt. No. 252). Having thoroughly considered the briefing and the relevant record, the Court DENIES the motion for the reasons explained herein.

Plaintiff, when it originally so moved, sought an order compelling Defendant Public Service Insurance Company ("PSIC") to produce certain expert files, claims-handling documents, and claims-related communications. (*See* Dkt. No. 252 at 2–5). "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ. P. 26(b)(1). The Court has broad discretion to decide whether to compel disclosure of discovery. *Phillips ex rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

However, following supplemental production, Plaintiff seeks a subset of what it

1 originally moved for. (*See* Dkt. No. 266 at 1–6.)

2 First, as to the expert files, Plaintiff now asks the Court to compel production solely of
3 presentation materials by PSIC expert GailAnn Stargardter (as referenced in her curriculum
4 vitae) regarding Washington bad faith insurance litigation. (*See* Dkt. No. 266 at 6.) This request
5 is not well taken. The subpoena *deuces tecum*, upon which Plaintiff bases its request, sought
6 “[d]ocuments and [c]ommunications *related* to your work on [this case].” (Dkt. No. 253-2 at 25)
7 (emphasis added). The presentations Plaintiff now seeks are not related to the case. Therefore,
8 they are not responsive and not subject to production.

9 Second, as to the claims-handling documents, Plaintiff now asks for (1) PSIC’s written
10 claim manual applicable to this case and (2) case related e-mails and documents involving PSIC
11 President Jeffrey Fratantaro.¹ (*See* Dkt. No. 266 at 3–5.) But PSIC has provided the Court with
12 evidence that (1) no such manual exists and that (2) all responsive non-privileged
13 communications and documents involving Mr. Fratantaro have been produced. (*See* Dkt. No. 278
14 at 1–2.) Plaintiff’s current speculation otherwise is not sufficient to support its request. *See*
15 *United States v. Mincoff*, 574 F.3d 1186, 1200 (9th Cir. 2009) (“[M]ere speculation about
16 materials in the [opponent’s] files [does] not require the district court to make those materials
17 available.”)

18 For the foregoing reasons, Plaintiff’s motion to compel is DENIED.

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23 ¹ To the extent Plaintiff seeks to now compel the production of similar materials involving *other*
24 PSIC personnel, (*see* Dkt. No. 266 at 5), no such request was included in its motion, (Dkt. No.
25 252 at 3–5). It is untimely to do so on reply. *See, e.g., Delgadillo v. Woodford*, 527 F.3d 919, 930
26 n.4 (9th Cir. 2008) (“arguments raised for the first time in petitioner’s reply brief are deemed
waived”); *United Specialty Ins. Co. v. Shot Shakers, Inc.*, 2019 WL 199645, slip op. at 1 (W.D.
Wash. 2019) (same).

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2 DATED this 10th day of February 2025.
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6 A handwritten signature in black ink, reading "John C. Coughenour", is written over a horizontal line.

7 John C. Coughenour
8 UNITED STATES DISTRICT JUDGE
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